

Message Text

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TO AMEMBASSY SANTIAGO IMMEDIATE

S E C R E T STATE 164697

EXDIS

E.O. 11652: XGDS

TAGS: PFOR, EIND, CI

FOR AMBASSADOR DAVIS FROM KARKASHIAN

SUBJECT: CHILE BILATERAL TALKS: AUGUST 17

REF: STATE 163581

1. FOLLOWING IS FYI, UNCLEARED SUMMARY OF MEMCON AND
SUBJECT TO REVISION.

2. BEGIN SUMMARY: DURING SECOND AND LAST DAY OF CURRENT
TALKS, BOTH SIDES RESTATED RESPECTIVE POSITIONS WITH
MAJORITY OF TIME DEVOTED TO COMMENTS AND QUESTIONS ASKED
BY U.S. DELEGATION ON NEW CHILEAN PROPOSAL REPORTED
REFTEL. WITH VARIOUS ISSUES REMAINING TO BE EXPLORED
AND NUMEROUS QUESTIONS STILL OUTSTANDING BY LATE
AFTERNOON WHEN CHILEAN DELEGATION HAD TO LEAVE TO
RETURN TO SANTIAGO, BOTH SIDES AGREED TO "TEMPORARY
RECESS" WITH MEETING TO RECONVENE IN NEAR FUTURE WITH
SECRET

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EXACT DATE AND SITE TO BE DECIDED LATER. END SUMMARY.

3. NO DECISION OR AGREEMENTS REACHED BEYOND EXPRESSIONS
OF MUTUAL DESIRE FIND SATISFACTORY SOLUTION AND WILLING-

NESS TO CONTINUE SERIOUS CONSIDERATION OF EACH OTHER'S

PROPOSALS. TOHA ACKNOWLEDGED THAT NEW CHILEAN PROPOSAL OBVIOUSLY DID NOT FULLY SATISFY U.S. REQUIREMENTS AND VOLUNTEERED THAT IT WAS NOT A FORMAL OFFER REQUIRING IMMEDIATE APPROVAL OR REJECTION. HE STATED GOC WAS OPEN TO SUGGESTIONS AND WILLING TO EXCHANGE VIEWS AND CONSIDER IDEAS WHICH MIGHT FURTHER NARROW GAP BETWEEN RESPECTIVE POSITIONS.

4. ASSISTANT SECRETARY KUBISCH SUMMARIZED U.S. POSITION AND OUR COMMENTS ON LATEST CHILEAN PROPOSAL IN FOLLOWING TERMS. U.S. HAS PROPOSED EFFECTIVE THIRD PARTY PROCEDURE; WE HAVE NOT SPECIFICALLY LABELED IT AS ARBITRATION; WE HAVE NOT RULED OUT ANY FORMULA OR TREATY; WE WANT THE PROCEEDING LIMITED TO COPPER COMPENSATION; WE WANT THE PANEL TO DETERMINE THE MERITS OF ALL INTERNATIONAL LAW ISSUES NECESSARY TO DETERMINE WHAT, IF ANY, AMOUNTS OF COMPENSATION ARE OWED THE COMPANIES; WE WANT THE PARTIES TO AGREE IN ADVANCE TO IMPLEMENT THE RESULTS OF THIS PROCEEDING; IT IS UP TO THE GOC TO DECIDE HOW TO PROCEED WITHIN ITS OWN LEGAL AND POLITICAL FRAMEWORK.

5. KUBISCH SAID OUR PRELIMINARY REVIEW OF CHILEAN PROPOSAL INDICATES SOME POSITIVE, SOME NEGATIVE, AND SOME REGRESSIVE ELEMENTS. IT IS POSITIVE IN THAT GOC WILLING TO REACH AGREEMENT ON ESTABLISHING THIRD PARTY PROCEDURE, NAMING A PANEL AND DEFINING ITS TERMS OF REFERENCE; THAT AT LEAST 3 OR 5 PANEL MEMBERS WOULD BE NEUTRALS; THAT TIME LIMIT OF LESS THAN YEAR CAN BE AGREED ON; THAT PROCEDURE WILL BE AN ADVERSARY ARGUMENT; AND POSSIBLY THAT BOTH PARTIES MAINTAIN BILATERAL CONTACTS DURING PROCEDURE. HE SAID WE SEE AS NEGATIVE FACTORS THAT PANEL WOULD DEAL WITH BROAD RANGE OF ISSUES NOT DIRECTLY RELATED TO COMPENSATION, AND THAT WE DO NOT SEE IN GOC PROPOSAL
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ANY ASSURANCE OR GUARANTEE OF CONCRETE, DEFINITE AND FINAL RESULT. WE SEE REGRESSIVE ELEMENT IN THAT SOLE JUDGMENT OF THIRD PARTY, OR INTERNATIONAL PANEL, ON MERITS OF WHETHER COMPENSATION IS OWED WOULD BE EXCHANGED ESSENTIALLY FOR UNCERTAIN RECONSIDERATION BY CHILEAN COPPER TRIBUNAL, OF EXCESS PROFITS DETERMINATION, ASSUMING, OF COURSE, THAT DENIAL OF JUSTICE FINDING IS MADE.

6. THROUGHOUT SESSION, AS DURING PREVIOUS DAY'S MEETING, CHILEAN SIDE INSISTED CHILE'S PRESENT DAY CIRCUMSTANCES MADE NEW PROPOSAL ONLY "PRACTICAL" OPTION OPEN SINCE ANY ARBITRATION PROCEDURE OR PRIOR, BINDING COMMITMENT

TO CARRY OUT PANEL'S FINDING WAS NOT JURIDICALLY OR POLITICALLY POSSIBLE AT THIS TIME. TOHA INDICATED HE CLEARLY UNDERSTOOD THAT CRUX OF U.S. CONCERN WITH CHILEAN PROPOSAL HAD TO DO WITH THE ABSENCE OF ANY GUARANTEE OF A FINAL AND CONCRETE RESULT EMERGING FROM THE THIRD PARTY PROCEDURE.

7. BEFORE "RECESSING", BOTH SIDES AGREED TO REFRAIN FROM MAKING ANY PUBLIC REFERENCE TO THE CURRENT MEETINGS. HOWEVER, ON AN IF ASKED BASIS ONLY, BOTH PARTIES AGREED THEY WOULD ONLY CONFIRM THAT "CONVERSATIONS WERE HELD IN AN ATMOSPHERE OF GOODWILL AND MUTUAL UNDERSTANDING AT THE CHILEAN EMBASSY IN WASHINGTON ON AUGUST 16-17 BETWEEN GOC REPRESENTATIVES, LED BY EX-DEFENSE MINISTER TOHA AND VICE MINISTER OF MINING SOTO, AND USG DELEGATION, HEADED BY ASSISTANT SECRETARY OF STATE JACK B. KUBISCH AND TREASURY ASSISTANT SECRETARY JACK M. HENNESSY, ON PENDING BILATERAL MATTERS." ROGERS

SECRET

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